

PUBLIC HEARING

JANUARY 13, 2016

A public hearing of the Council of the County of Kaua'i was called to order by Mason K. Chock, Chair, Planning Committee, on Wednesday, January 13, 2016, at 1:31 p.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Mason K. Chock  
Honorable Gary L. Hooser (*present at 1:33 p.m.*)  
Honorable Ross Kagawa  
Honorable Arryl Kaneshiro  
Honorable KipuKai Kuali'i  
Honorable JoAnn A. Yukimura (*present at 1:49 p.m.*)  
Honorable Mel Rapozo (*present at 1:57 p.m.*)

The Clerk read the notice of the public hearing on the following:

"Bill No. 2609 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO HOMESTAYS,"

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on December 2, 2015, and published in The Garden Island newspaper on December 8, 2015.

The following communications were received for the record:

1. Diamond, Caren, January 9, 2016
2. Imperato, Carl, January 8, 2016
3. Sakamoto, Tina, January 13, 2016

The hearing proceeded as follows:

SCOTT K. SATO, Deputy County Clerk: Committee Chair, we have three (3) written testimonies and three (3) registered speakers at this point. The first registered speaker is John Hoff, followed by Lorna Hoff.

Committee Chair Chock: Is Mr. Hoff here? No? Can we move on to the next speaker? To those in the public, may you please take your conversation outside? Thank you. Next speaker.

Mr. Sato: The next speaker is Michelle Cole.

Committee Chair Chock: Thank you. Ms. Cole, please come forward. Please state your name for the record.

MICHELLE COLE: Hello. My name is Michelle Cole. Thank you for allowing me to testify today. My family moved to Hawai'i in 1960. I was raised on O'ahu in Ewa Beach. Hawai'i is the only home I have ever known. In 1982, I moved to Kaua'i and lived here for the next fourteen (14) years. My husband,

Serafin, moved to Kaua'i in 1972. In 1996, we moved back to O'ahu to take care of my aging parents, and even after my parents died, we remained on O'ahu for sixteen (16) years, as we were settled into our perspective careers. My husband and I have always enjoyed the benefits of free enterprise. We both worked as independent contractors most of our lives; I was teaching ballet and Serafin worked as a mason, all the while, we were missing our home on Kaua'i. In 2005, Serafin underwent quadruple bypass surgery on his heart. Two (2) years later, a pacemaker was implanted to help stave off any heart attacks. To add to this, in 2008 the market crashed. This combination severely changed our lives. In 2011, my husband and I found ourselves caught in the clutches of the market crash and severe health concerns. We managed to hang in there from 2008 through 2011, but then it caught up to us quickly. We made the painful decision to list our condo on O'ahu in a low real estate market, which we felt would be better than facing foreclosure, knowing full well that we might not be able to find anything in our price range to purchase in Hawai'i. It was hard to find a buyer that qualified to buy our property and took an entire year to sell. Times were tough, but somehow we made it. We moved back to Kaua'i in 2012 after selling our condo. We were so excited to be back home again. We felt we knew exactly what we were getting into and we were just happy to be back where we had lots of friends and family. After finding a home we could afford in a good neighborhood, we were even more excited. I had a job when I moved to Kaua'i, but both Serafin and my daughter, Selena, were finding it impossible to find work that could support them. In the end, they decided to move back to O'ahu for work. All of a sudden, I was all alone in a huge house. I placed an ad in The Garden Island newspaper looking for a long-term renter to help offset our expenses, but I did not get one bite. One morning, I woke up feeling a bit sad. As I started to tear up, I thought, "Hey, I will Google it," so I Googled and up came Airbnb. I could not believe it could be that simple. This would answer all of my problems: I would not have an empty house anymore, I would not be lonely anymore, and on top of that this would also improve my earning capacity, and would allow my husband to come back home. The biggest hurdle I thought would be the website, but it was not. I am running out of time. In these economic hard times, I sincerely hope that when you are making your decisions regarding business opportunities like homestays, you will consider both the hosts and benefits from being able to add extra income to the company that it brings to our homes, to the guests who benefit from being able to stay at a lower cost...

*(Councilmember Hooser was noted as present.)*

Committee Chair Chock: Ms. Cole, our rules allow for three (3) minutes to speak, but you will have an additional three (3) minutes once everyone else has spoken. Sorry for interrupting you. I am going to call Mr. Hoff back since he has returned. You were called earlier to testify.

LORNA HOFF: This is Lorna and John Hoff for the record. Aloha Councilmembers. My husband and I are taxpaying, voting residents of Kaua'i for fifty (50) years with five (5) generations of family on Kaua'i and living on property that has been grandfathered eleven (11) times during our family's ownership. What has me still confused is why in previous years Transient Vacation Rentals (TVRs) on agricultural lands, which are owned and operated by nonresidents, who do not pay Hawai'i taxes and do not vote in Hawai'i or given grandfathering rights across the board when approximately five (5) bed and breakfast (B&B) operators on agricultural land, doing business for over ten (10) years, are residents, pay Hawai'i taxes, both General Excise Tax (GET) and Transient Accommodations Tax (TAT), and vote in Hawai'i are not given the same

courtesy. Bill No. 2609 admits grandfathering single-family vacation rentals, "This bill does not apply to bed and breakfast unit ('homestays')." This Bill should comply with the policy of the General Plan in grandfathering single-family exclusive residents on agricultural land prior to implementation of this Bill of January 2016. It would be like a parent saying to their children, "Because TVR is bigger, he will get special treatment. B&B, you will always going to be small, so you are not worth considering." No wonder children often resent their parents. In my husband and my specific issue, we are confused because in 1965, we purchased property and leased ten (10) acres of agricultural land before 1972. I believe this was before Kaua'i's first Comprehensive Zoning Ordinance (CZO). In 1983, we subdivided the land into the Hoff Agricultural Subdivision for farm workers' dwellings. All permits were approved to legally run our farming operation. The Hoff family has a history of over four and a half (4.5) decades of State-licensed agricultural contracting. I, myself, have over thirty-five (35) years in private and hotel industry agriculture. After four (4) decades of being recognized as a bonafide agricultural operation, we believe our acquired rights of being grandfathered are being denied by a passage of Bill No. 2609. Why, after being recognized and grandfathered over four and a half (4.5) decades? Our parents lived on the property and our children, grandchildren, and great-grandchildren hope to remain on the property. As an aside, this family is very diverse in their ethnicity covering the bloodlines of German, Norwegian, Korean, Japanese, Chinese, Filipino, Hawaiian, and Portuguese ancestry. Today, my husband John and I would appreciate it if State Law Hawai'i Revised Statutes (HRS) Section 46.4, defining the long honored practice of grandfathering, be honored by the Council as it has been for the past four and a half (4.5) decades. John and I submitted...

Committee Chair Chock: I am sorry, but I have to interrupt you there. I know you are almost done, but we will have you back. Thank you.

Ms. Hoff: Can my husband give me his three (3) minutes to testify?

Committee Chair Chock: Have they both signed up separately to testify?

Mr. Sato: Yes.

Committee Chair Chock: Okay. You have another three (3) minutes. Go ahead.

Ms. Hoff: Okay. John and I submitted to you Tuesday, January 12<sup>th</sup>, a graph showing the permits on B&Bs issued since 1988 up to the beginning of 2015. This covers twenty-eight (28) years. There were only eight (8) permits activated. Within those twenty-eight (28) years, only one (1) permit holder can be verified as paying an annual renewal fee. I leave you with this question: "How can B&B owners be accused of operating illegally when permits were withheld when applied for?" Perhaps the answer is on page number 9 of the Helber, Hastert & Fee Planners, Inc. – CZO Update of 2005. "The Planning Department has generally not required use permits for vacation rentals. They need not apply for use permits in areas zoned Residential, Agricultural, and Open." Thank you. Since I have a minute or two (2), in just reading this new Bill, and this is for new B&Bs coming in, it says that you have to be property 24/7, seven (7) days per week. I think what should be added here is that there should be something put in, in case of an emergency, because with John's heart attack, I would have had to wake all the

guests up at 2:00 a.m. since he had three (3) of them, and tell them that they would have to leave the house and pay them back. I have not left the island for eight (8) years and it was only because of surgery. It does not bother me much, but I think there should be something put in here that if there is an emergency we understand the situation and someone could be called in. It just would be nice to have some people that actually run B&Bs maybe talk to the Council and fill in a few items that have not been brought up. I appreciate you coming up with this and for listening to me. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Mr. Sato: The next speaker is Eli Taylor, followed by  
Bebe Nicholas.

Committee Chair Chock: Mr. Taylor, have a seat and make sure the  
blue light is on. Please introduce yourself for the record.

ELI TAYLOR: My name is Eli Taylor. I am coming up to represent mostly my father, Gene Taylor. My scenario is similar to what I just heard and others have heard around the island, that we are on agricultural land and the cost of that do not permit practical farming to pay for the life here. I have moved here to support my dad and do that mostly through programming full-time. We also do farming, but we actually have a relatively large pot now, as we have gotten together with a few friends to expand that operation and more selling bok choy for two dollars (\$2) a pound. That is not going to cut it and I think ultimately some exemptions to certain agricultural spaces would be extremely helpful to keep particularly my dad in his house. Beyond that, he is retired, is the full owner, and lives there full-time. I know that would make that a little more practical for retired owners and keeping it on. Frankly beyond that, I appreciate the rural landscape of the place and do not necessarily think it should be stretched much beyond that. I am not asking for wide open B&Bs on every spec house or farm on the island, but certainly for retired folks and whatever situations could be fit into this Bill. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Mr. Sato: The next speaker is Bebe Nicholas, followed  
by Sam Lee.

BEBE NICHOLAS: Good afternoon Members. Thank you for listening to me and for hearing my little request. My name is Bebe Nicholas and I live in Kālāheo. I moved from England twenty-five (25) years ago. When I moved here, we had a family of four (4), so we built a reasonable medium-size house. As the children grew and left the nest, I was there left alone so I have this house here now. I have a big mortgage to pay and do not have any other income coming in apart from being an owner of a gallery. As this application came in for the B&B, I also thought that this was an opportunity to get extra income to pay the mortgage. We made an application and we started. My only concern is it is not quite clear how the assessment is being applied in regards to the square footage of how they are assessing it for applying this new tax in regards that it is not a vacation rental; I live there and am a resident there. It is actually being classified as a commercial tax in the commercial tax bracket. That is what I would honestly and honorably come to ask for that as a help and to make it a little easier for us as single mothers

and perhaps a different bracket and in concession as to how it applies. I thank you for that.

Committee Chair Chock: Thank you.

Councilmember Kagawa: I have a question.

Committee Chair Chock: Hold on, Ms. Nicholas. You have a clarifying question from Councilmember Kagawa.

Councilmember Kagawa: To clarify what you said, you mentioned that you are an owner of a gallery.

Ms. Nicholas: Yes.

Councilmember Kagawa: Okay.

Committee Chair Chock: Thank you.

Mr. Sato: The next speaker is Sam Lee, followed by Eddi Henry.

SAM LEE: Members, my name is Sam Lee. Before I commence with my short testimony, I want to make it clear that we do not oppose B&Bs across the board. What we have said consistently is that, in fact, we support B&Bs providing that they are located in the appropriate zoning district. With that said, I want to go on the say that as I read the Bill before you, it proposes that B&Bs be allowed within Resort, Open, and Residential lands. This is exactly contrary to what I just said. Some of these non-permitted businesses already exist in the Residential and Agricultural districts. As a resident of a neighborhood that I already heavily saturated with transient vacation units, we are opposed to the addition of any more such units whether it be TVRs, B&Bs, homestays, or whatever might be future terminology to describe transient rentals. We respectfully request that the Council consider amending the Bill to require as follows: 1) without exception, confine future permitted B&B/homestays to the Visitor Destination Area (VDA), which is consistent with the law on the books; 2) closedown all unpermitted transient vacation rental units including TVRs, B&Bs, and homestays within a time period designated by the Council and require regular enforcement progress reports be filed; 3) disallow grandfathering of any unpermitted operation, as legal operators should not be able to apply for a permit; and 4) declare an immediate moratorium on the issue of all new permits to B&B/homestay applicants until all violations are resolved. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Mr. Sato: The next speaker is Edde Henry, followed by Tina Sakamoto.

*(Councilmember Yukimura is noted as present.)*

EDDI HENRY: My name is Eddi Henry. Happy New Year to the Members. Thank you to Mr. Lee for doing that clarification. We spoke outside and the way these hearings and testimonies have been going, it has continually created a violent environment against B&B owners. We continue to pay for the sins

of the TVRs. The testimonies, such as Mr. Lee's, gives about fifty percent (50%) proliferation in his neighborhood as he is talking about non-owner vacation rentals, not B&Bs. I want to address some comments that Councilmember Rapozo made in the last meeting where we had this conversation. He made specific comments about me and my business and how much I paid for my property. I did not get a chance to address that, so I want to do that here. I am highly offended by the continual pointing of the finger as I have broken a rule, as Councilmember Rapozo says, that I should have a farm dwelling. In his comment made of, "Why do I not get a horse and grow some vegetables?" That is irresponsible commenting and also this demagogue behavior and fashion that continues to feed this misunderstanding of B&Bs, and again, having us pay for the sins of proliferation of TVRs. I made a professional decision to establish a B&B and came here in 2006 specifically to do that and buy a property; buy it responsibly and by the laws. I did my homework and research and I do not believe that it should ever be in residential. There is a reason for zoning. Residential is residential, not Commercial. It should never be in Residential; however, a country inn should be out in the country in rural areas. In doing my homework in two (2) years and finding just the right property for myself and the community, I went by the Kaua'i General Plan. At the time in 2006 when I purchased my property, there was no processing or use permit process in place. I have asked and put it in. The Planning Department knows that I have done that since the beginning of time. If I can just read the rationale for policy that I went by in making my decision, and this is the Kaua'i General Plan, "Rationale for policy: the primary intent highlights the importance of Open Agricultural lands in maintaining Kaua'i's rural character and its economic viability as a visitor destination." I am on Open land. The policy also states a secondary intent for lands in the Agricultural land designation to provide an opportunity for Kaua'i citizens to reside in an agricultural community.

Committee Chair Chock: Ms. Henry, I am going to have to ask you to come back for a second time because you are out of time at this point.

Ms. Henry: Okay.

Committee Chair Chock: We will take the next speaker and call you back.

Ms. Henry: Or can I have Matthew read this for me?

Committee Chair Chock: You can work that out with Matthew. I am going to have to ask for the next speaker who is in line.

Mr. Sato: The next speaker is Tina Sakamoto, followed by Julie Souza.

TINA SAKAMOTO: Good afternoon Councilmembers. My name is Tina Sakamoto and I would like to offer four (4) areas of testimony. The first one I would like to speak on is location. On June 23<sup>rd</sup> of this last summer, I attended a Planning Commission public hearing and on this day, there were eleven (11) applications for zoning permits to allow conversions of existing residents into homestay operations—eleven (11); some on agricultural land, but most of them in residential neighborhoods. Of those eleven (11), there were four (4) for Lāwa'i. I live in Lāwa'i and I do not want to see commercialization of our residential neighborhood, nor do I want to see it in any other part of the island that is not zoned. Simply said, I think that all transient accommodations, including

homestays, should not be allowed outside of the zoned visitor destination area, the VDA. The second issue I would like to address is legality. It has been documented by the County's Planning Department that a homestay permit process has and is in effect. The information provided by the Planning Department shows that dating back to 1988, homestay applications for permits were approved, denied, withdrawn, contested or deferred. So what I provided to you is the report from the Planning Department and a reformat actually showing the zone and area to give you a locality of those since 1988. Those homestay operators who did not obtain permits operated illegally. The grandfather the illegal homestay operators is sending a message that it is okay to operate illegally until you get caught, and then we will grandfather you in and make you legal. Ignorance is no excuse of the law. There should be no grandfathering of these illegal homestay operators. The third issue that I would like to address is enforcement. Much has been said about the lack of or lacks in the enforcement of transient vacation rentals. Laws are not effective if they are not enforced. Illegal operations should not be allowed to operate. The identification and closure of all illegal transient vacation rentals, including homestays is imperative. Lastly, as a temporary measure, I would like you to consider a moratorium on the issuance of any new transient vacation permits and this would be a consideration and temporary until a comprehensive transient vacation rental, including homestays, bill is finalized and the ordinance is instituted. To recap: 1) no homestays outside of the VDA; 2) no grandfathering of existing non-permitted homestay operations...

Committee Chair Chock: That is your time.

Ms. Sakamoto: I just have two (2) more, so I will come back.  
Thank you.

Mr. Sato: The next speaker is Julie Souza, followed by  
Matthew Bernabe.

JULIE SOUZA: Aloha Councilmembers and Staff. Good afternoon and Happy New Year. We are already on the 13<sup>th</sup> day. My name is Julie Souza. I am a resident of Kukui'ula. I have come before this body in the past. Today I am here to give my testimony on the B&Bs in our residential neighborhood. At first, I was not going to speak in opposition of Bill No. 2609, but I felt I needed to because if the local residents do not speak, you may think that everything is copasetic; we are okay with whatever comes to this Council floor. You all know that it is not the "local style" to come out. We always feel that we cannot do anything. "Why waste your time by coming forth?" But we have to stop thinking and doing that and voice our opinions on items that are changing our island home. I believe it would be interesting to find out who are the owners of all of these B&Bs and homestays on Kaua'i, legal or illegal. We need to control what we already have. These should be in the VDA. I do not oppose it by being in the VDA, not in the residential area. As you all know, I live on Hoona Road and I am surrounded with transient vacation rentals, so you can almost know how that makes you feel; you do not have any neighbors. Besides, we need to utilize the hotels, timeshares, and the condos. These provide jobs for our local people. Where are they going to work if everybody has a B&B because these B&Bs are being claimed by the owners? They are not utilizing our labor. Just keep in mind that I do not oppose the B&Bs in the VDAs. I strongly oppose it in our residential area. I have many friends and they all feel the same way. I can get names written down and sent in to you, but they are the locals that do not want to come and talk. I ask you today to please look deep

into your hearts regarding this item on the table and vote accordingly. Keep our residential areas the way they are. *Mahalo* for your time.

*(Council Chair Rapozo is noted as present.)*

Committee Chair Chock: Thank you. Next speaker.

Mr. Sato: Your last registered speaker is Matthew Bernabe.

MATTHEW BERNABE: Matthew Bernabe for the record. First, let me start off by saying that I also do not want them in residential areas. Now, what Ms. Henry was trying to say was that in her professional capacity, she used the 2000 Kaua'i General Plan to map out her business strategy. She looked in there and it describes...Moloa'a Hui is specifically in the General Plan. This is the part that gets me upset because lots like hers, her one million six hundred thousand dollars (\$1,600,000) home is not even on her whole five (5) acres; it is only on a little over one (1) acre. She had to purchase the remaining three (3) acres for her five (5) totaled. It is addressed in the General Plan as Open space lots that can go for more money so that the more...not more...the better farm land could sell for cheaper and the developer would not lose money. It basically sounds like a bargaining deal with the developer saying, "We will give you the bluff lots on the top," which have vertical wall space of their land, which is most of Ms. Henry's land—I know it well. The lots that are on the bottom that are flat, next to water and can be irrigated, and you can get a mechanized tractor—we are going to sell those lots for two hundred thousand dollars (\$200,000) for two (2) acres, one hundred thousand dollars (\$100,000) an acre. If they cannot farm it, then they cannot farm it and that is on them. But her specific lot that she owns was deliberately designed to offset the cost of developing all parcels. I think the reason that occurred was because that was the plan to develop that side of the island so that we could collect the real property tax revenues driver. The part that gets me upset is that the people who actually have these subsidized farms...some of them are in Moloa'a and petitioning for wells and this and that, but they come here, sing their sad story of why they cannot succeed, and I read in the plan that their lots were already subsidized from the start. That is why she is here and that is why her lot is a good example of what would be a good place for a B&B. She has designated it as Open, it is rural, and it really was designed by your policy of the 2000 General Plan from what I read. She showed it to me and I read it myself. In her next testimony, I am sure that she is going to go more in-depth. However, it makes me a little frustrated that we sit here this many years later and we do not know what happened, when we read it in black and white. Well, I read it in black and white. Thank you.

Committee Chair Chock: Thank you. Hold on, Mr. Bernabe. You have clarifying question from Councilmember Yukimura.

Councilmember Yukimura: Did you say that you agreed that B&Bs should not be outside of VDA's?

Mr. Bernabe: What I said to start my testimony was that I agree that residential areas should not have B&B businesses.

Councilmember Yukimura: Okay. Thank you.



Committee Chair Chock: Thank you. Would anyone else like to testify on this item for the first time? Going once? Okay, I see someone that would like to speak for the first time. Please come up.

SUSAN GLANCE: My name is Susan Glance. In observation, I just happened to catch a clip on the news last night that caught my attention, and it was a Honolulu news channel that addressed income in our State and addressed incomes and what it took to make it on Kaua'i in minimum wages, eight dollars and fifty cents (\$8.50) an hour. But if you have two (2) adults in the household, just a minimum household doing the basics like paying the rent or mortgage and groceries, it took a minimum of two (2) people making eighteen dollars and eighty-eight cents (\$18.88) an hour. I know a lot of people that do not only work one (1) job here, but they work two (2) jobs that do not bother their neighbors; they just want to pay their mortgage and eat. I kind of looked into this a little bit and I see that a lot of this is in ninety (90) different countries and I have seen this issue and concern in other cities like San Francisco, which is in a neighboring state and the same thing was brought up, as they were concerned about it raising home values that might be unobtainable for others because of that. After a big study, they voted that down and they allowed it, because it was supplementing people to be able to keep their homes. They got permission from their neighbors and they let them know it was going on and they were respectful. It occurred to me that my grandmother in 1920 had what they called "roomer" or a "boarder"—they referred to as "roomers" then to make ends meet. I think that this is the basic concern of maybe quite a few people that do this because they just want to keep their house and maybe they have lost their job, and since 2008 the economy has changed a lot, for the worst for many. I know that in watching the Council for some time that the medium house is six hundred sixty-three thousand dollars (\$663,000), but your average Hawai'i income only qualify for two hundred fifty thousand dollars (\$250,000)...

Committee Chair Chock: Thank you. I am going to have to stop you.

Ms. Glance: Thank you for your time.

Committee Chair Chock: Would anyone like to speak for their first time? If not, I will call up people who would like to speak for a second time. Ms. Cole, you can come up to complete your testimony.

Ms. Cole: Again, this is Michelle Cole. We, the hosts of homestays, exemplify the spirit of *aloha* by opening our homes to our visitors at a reasonable rate and sharing our knowledge with them about our local communities by suggesting local businesses that they can access during their stay to accommodate their activities. Homestays tend to create economic value that disproportionately benefits people below medium income. That is, people who have less money tend to benefit more than people with more money. It comes from inclusion in things you would not otherwise have access to. In the context of homestays, it is the large number of people who did not take fancy vacations who are now able to do that—to people who are supplementing their income by renting out their place. Both of these populations in general tend to be disproportionately drawn from people who are not very well off. People who are wealthy are not motivated to be homestay hosts. This Bill, Bill No. 2609, was passed on December 2, 2015 by this Council; however, in Section 8-18.1, "General Provisions for Homestays," the Bill requires all applicants to be completed by the Planning Department, no more than ten (10) new applications for homestay operations shall

be accepted for review in 2015 and 2016. I believe there would be a higher rate of compliance if those years could be altered to reflect 2016 and 2017. In Section 8-18-2, "Development Standards for Homestays," in (b) you state that, "The residential structures used for homestay operations shall be serviced by a septic system approved by the State Department of Health." Requiring this is too expensive for many hosts; just too big of a burden. I suggest that you consider removing this requirement, which will also lead to a higher rate of compliance. Please support free enterprise. We hear all too often that these people should do more to support ourselves and rely less on the government to support us. The idea of homestays supports and promotes these sentiments. I am so happy to see this panel before me. I can see that you are the kind of people that truly care about the welfare of the people of Kaua'i. Too often, we see our *keiki* move away to the mainland because they feel that they cannot make enough here in Hawai'i to keep up with the rising standard of living. Why should we allow these multimillion dollar hotel industries to be the only ones that prosper from revenues gained by overnight stays? Why can we, the little guy on Kaua'i, enjoy our right to free enterprise and make a little extra to allow us to stay here? Thank you for listening to my testimony today.

Committee Chair Chock: Thank you. Hold on, Ms. Cole.  
Councilmember Yukimura.

Councilmember Yukimura: Hi. Do we have a copy of your testimony?

Ms. Cole: No.

Councilmember Yukimura: Can you make that available so we can copy it?

Ms. Cole: Certainly.

Councilmember Yukimura: Thank you.

Committee Chair Chock: I will go down the line here. I know that Ms. Henry wanted to speak again.

Ms. Henry: I will read this real fast where Matthew left off. Where he is speaking of is specifically the Moloa'a Hui project where I am, and this is again in the Kaua'i General Plan: "...Moloa'a Hui project in which the developers created farm parcels to be sold at agricultural land prices with irrigation, water, and dirt roads only. Some of the farm parcels had house lots. Development of agricultural lots was subsidized by developing a small number of residential view lots..." me, "to be sold at much higher residential prices." So I am supporting agriculture by my value of property that I bought by subsidizing it. Back to where I left off with the Kaua'i General Plan: "The so-called 'agricultural subdivisions' are primarily residential. In fact, at least ninety percent (90%) of the dwellings in the agricultural district on Kaua'i are primarily used as single-family residences and do not support income-producing agriculture. High prices reflect strong market demand for agricultural house lots, typically an agricultural house lot served with public road and potable water supply will be priced at one hundred twenty-five thousand dollars (\$125,000) to one hundred fifty thousand dollars (\$150,000)." This was written in 2000. "Such prices make lots infeasible for agricultural enterprise defined as income-producing (inaudible) agriculture." So no, Councilmember Rapozo, I cannot get a horse and grow vegetables. Kaua'i like the

other neighborhood island counties has found it impossible to enforce the State requirement that only farm dwellings and farm worker housing are allowed within the State agricultural land use district. In most cases, the State agricultural district is conterminous with the County's agricultural zoning district. What is the remedy if a person builds a house, intending to farm his property, fails and gives up farming and instead goes to work at a hotel? By definition, his house is no longer a farm dwelling, but is now a single-family residence. What practical remedy is available to enforce the farm dwelling provision? It would be unreasonable and infeasible for the County to enforce the former farmer to sell his home and find a new house outside of State agricultural land. Section 5.2.1 of the General Plan states, "Policy (b)(3): promote and preserve open agricultural land..." me, "as a key element of Kaua'i's rural character and lifestyle, essential to its image as 'The Garden Island' and to the continued viability and development of Kaua'i's visitor industry." Section 5.2.1 Policy (e) states, "The secondary intent of the Agriculture designation is to provide an opportunity for Kaua'i citizens to reside in an agricultural community. An 'agricultural community' is an area that has both agricultural uses and residences. Typically, an agricultural community is established through subdivision of land and provision of roads and potable water service. Agricultural communities are generally located in outlying areas, do not have convenient access to County facilities, and may not receive the full range or highest level of County services such as are available to residential communities, towns, and urban centers."

Committee Chair Chock: Thank you. Do you have a question?

Councilmember Yukimura: Yes. May we have a copy of your testimony?

Ms. Henry: Yes.

Councilmember Yukimura: Did you send it already or will you send it?

Ms. Henry: Yes. Councilmember Chock also has a copy that I E-mailed and I would be happy to E-mail it to you as well. It is basically a digital copy of my use permit that has been going on forever that this all is in.

Councilmember Yukimura: Okay, but what you were reading from will be sent to us?

Ms. Henry: Yes, I can do that.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Ms. Sakamoto, you may come up.

Ms. Sakamoto: Tina Sakamoto again. I just wanted to recap what I presented before you that I hope you preserve our neighborhoods and that the VDA is the zoned area for homestays. There was a legal process for permitting homestays since 1988, so it should have been followed, and if it was not, it is illegal and there should not be grandfathering of illegal units. I hope that there is effective enforcement to close down the illegals and as a consideration, may be at the moratorium. My recap, which I did not finish last time and would like to finish now, are the four (4) items: 1) no homestays outside of the VDA; 2) no grandfathering of existing non-permitted, illegal homestay operations; 3) enforcement identification and closure of all illegal transient vacation rentals; and

4) a consideration of a moratorium on new transient vacation rental permits. Thank you.

Committee Chair Chock: Hold on.

Councilmember Yukimura: Tina, do we have your written testimony?

Ms. Sakamoto: No, these are just my notes. I think you have my two (2) reports, one from the County and one where I reformatted. I can E-mail it to you.

Councilmember Yukimura: I am sorry that I have not had a chance to read all of the incoming E-mails, but I am interested in the documentation of a permit process for homestays that you mentioned.

Ms. Sakamoto: Yes. Through the Information Act, I requested information from the Planning Department, which was circulated to each Member, and has the highlighting to show that there was a permit process since 1988. Some were approved, some were denied, and some were withdrawn. Others were contested or deferred. On the second sheet is similar to this report from the Planning Department, but I have identified the permitting of approved units by zone and area to give you the locality of the homestays.

Committee Chair Chock: Can we have a copy of your testimony today? I think that is what the Members are asking for.

Ms. Sakamoto: Okay, will do.

Councilmember Yukimura: Thank you.

Committee Chair Chock: Thank you. I called up those who I knew wanted to speak for a second time, but I may have overlooked those who already spoke and wanted to go again. Does anyone want a second chance to speak? You still have that opportunity. Please come forward.

Ms. Hoff: Aloha Council. This is Lorna and John Hoff again. This was the graph that we dropped off yesterday. We actually contacted the people. Going back to 1988, there was one (1) permit given. In 1989, there was one (1) permit given. In 1990, there was one (1) permit given. There were no permits in 1991, 1992, and 1993. In 1994, there were two (2). In 1995 to 1997, there were none. In 1998, there were three (3). From 1998 on, there was nothing.

JOHN HOFF: That is exactly why we were not permitted, because the County denied us permits when we went and asked for them.

Ms. Hoff: They had no application. We paid an attorney to do their application for them, several of us did. That application was then taken and used for other applicants to follow. Other people were refused because they did not have the application process in place. I just wanted to clarify the permits. You are talking twenty (20) something years for that many permits. The grandfathering does need to be honored. I believe the State has to change HRS Section 46-4. The State has to do that because the State allows grandfathering in their law in HRS Section 46-4. I think that when you are doing these things, it

really needs to be looked at and people that are long-time residents need to be considered because they have worked their butts off. Thank you.

Committee Chair Chock: Thank you. Ms. Nicholas.

Ms. Nicholas: I just want to respond to the Madame speaker there regarding income or residential help that she is saying that it is opposing where the residential B&B are rented, that it does not help the local community in jobs, etcetera. We do have that, we do offer that service, and we do have people to get jobs and we serve the community. I just wanted to read a little brief thing here that is being put together by one of my friends: "Kaua'i has been a popular tourist destination for many decades. Over the years, Kaua'i's tourism has taken a turn for the worst, accommodating only the entitled to visit. With hotel prices skyrocketing, often times well over two hundred dollars (\$200) per night, affords only a certain type of visitor to come, thereby eliminating the very diversity that makes Kaua'i unique in its visitors. Kaua'i should be welcoming those very same sort of people that make up our population like artists, young people, hikers, and world travelers. Often they cannot and will not spend that sort of money on accommodation and may choose to bypass Hawai'i altogether as a vacation option if they are priced out of the market. These tourists look to experience the community during their stay. Giving tourists another option, other than hotels, is a wonderful way to share our community." In other words, what I am saying is that the land and the house that has been given to us here as well—we are just passing by. We are giving it here and we have an opportunity...some are fortunate to even have a home and have a place here on this Earth. All I am asking is for the Council to listen carefully that this is an opportunity for us to all work together in a reasonable way in helping each other in this economy and for the time that we are here, and that God has given us this beautiful little part of that and to share it evenly. I ask that you will consider allowing permits in some of our residential areas to model the numbers that have actually allowed, as I was told was eight (8), and to extend that time as well. I do not oppose to paying a tax, but keeping it very reasonable and to make it really clear of how it is being assessed into the square footage of how the tax is being assessed and to pay for the extra work and accommodation of the homestay people.

Committee Chair Chock: Thank you. Hold on. You have a question.

Councilmember Yukimura: Can you tell us where your unit is, your home and business?

Ms. Nicholas: I serve the community in Hanapēpē. I have been there for twenty-four (24) years. I work with the Hamabata's, which I am sad to hear that Gwen passed away recently, too.

Councilmember Yukimura: Is it Residential land or Agricultural land?

Ms. Nicholas: No, it is Commercial land. That is the gallery where I work. I reside in Kalāheo.

Councilmember Yukimura: Okay, and you have a homestay operation in Kalāheo?

Ms. Nicholas: Yes.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Thank you. Would anyone else like to speak for a second time? Mr. Bernabe.

Mr. Bernabe: Matthew Bernabe for the record. I would like to just reiterate that I do not want to see this in residential areas. We just got over the Barking Dog Nuisance Ordinance and I do not want more backpackers in my neighborhood, setting my dogs off. Ms. Henry was actually reading right off of the 2000 General Plan. She was not reading her testimony earlier. There is a description of Open land right here. It is highlighted and I will read it: "Because Agricultural designated land typically adjoin lands planned or zoned Open, most Agricultural subdivisions, especially the north shore, are comprised of a mixture of two (2) zoning districts. Open lands typically include important land forms, wetland stream, steep slopes, and other environmental sensitive areas." The reason I read that is because if we can identify between those two (2), then I think we will have a better idea of where this can go. Upon her testimony and hearing how this County themselves rationalize some of these people moving forward with subsidizing their farms that they were not successful at—that is a whole other area. I want to talk about when I hear somebody testify about "we just want to save our house"—I am going to let the lawyers figure out what is up with the Agricultural land because there is some language in there that might put you folks on the hook; however, if you are just a regular Joe that owns a house next to me and you cannot cut it to pay your mortgage, that does not mean that I want you to have new people every week, coming to my neighborhood and offset what you cannot pay for your house. I would say that for the farmers as well, but *in lieu* of the evidence, I think you folks have to figure out the agricultural land issue and get some lawyers there. For residential, I do not want to hear, "I just want to keep my house," because I am at risk of losing my house the same way you are at risk of losing your house. Go figure out something else besides putting people in a residential area. What if a person decides that they want to make an automobile shop and have five (5) or six (6) cars every day in the yard, making big noise? We do not have that kind of stuff in our residential areas. For agriculture, I just wanted to point out the open land description because I think that is your area of where the target for B&Bs are.

Committee Chair Chock: You have a question.

Councilmember Yukimura: Matthew, not in residential areas even if they are in the VDA?

Mr. Bernabe: Can you clarify what "VDA" is?

Councilmember Yukimura: Visitor Destination Areas.

Mr. Bernabe: Oh.

Councilmember Yukimura: So you are against the B&Bs in residential areas even though they are in the VDA? I just want to clarify.

Mr. Bernabe: I will say this: I do not know how to answer that, but I can tell you that you folks better study the mistakes we have already made in some of these VDA areas before you move further with anything. Those residents might be the ones you want to ask that question to because I do not live in a VDA. I do not want to speak for them. It sounds like we have already messed

those areas up somewhat, a lot. Maybe we need to clean house or something. I do not know.

Committee Chair Chock: Thank you. Anyone else?

Ms. Souza: My name is Julie Souza. I mentioned before that I am not here to defend the idea that I want our tourists, our guests, to Kaua'i to only stay in hotels, condos, and timeshares. But I think at this time, we should find out how much the people are paying to go in the B&Bs. I am sure that they are not renting their B&Bs for fifty dollars (\$50) a night. That would be not right if they are telling us that. We need to utilize the labor of Kaua'i to be in the hotels, condos, and timeshares. They are bringing people in to clean their units, but they are not giving them benefits. They come in and clean. There is a house in front of me that charges three hundred dollars (\$300) to clean, but that is all they have is three hundred dollars (\$300). We need to really search our hearts about these B&Bs being in the residential zone. Thank you.

Committee Chair Chock: Thank you. Anyone else for a last time? If not, this concludes the public hearing and we will resume our Council meeting.

There being no further testimony, the public hearing adjourned at 2:38 p.m.

Respectfully submitted,



SCOTT K. SATO  
Deputy County Clerk

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